

Notice of Decision and Reasons for Decision

Applicant:	'AY6'
Agency:	Hume City Council
Decision Date:	27 December 2019
Exemption considered:	Section 33(1)
Citation:	'AY6' and Hume City Council (<i>Freedom of Information</i>) [2019] VICmr 223 (27 December 2019)

FREEDOM OF INFORMATION – local government – council – complaint – dog attack – investigation – *Domestic Animals Act 1994* (Vic) – personal affairs information

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs to the Agency's decision in that I have decided to release additional information.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, I have determined to grant access to certain documents in part.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
27 December 2019

Reasons for Decision

Background to review

1. The Applicant, through their legal representative, made a request to the Agency for access to:
 - ... all documents relevant to:
 - Any complaints relating to any dogs resident at [address in Victoria]
 - The Complaint lodged by [the Applicant] in relation to the dog attack on or about [date]
 - The investigation details, charges and outcome in relation to the aforesaid dog attack
 - Documentation in relation to the dog in the aforesaid attack.
2. In its decision, the Agency identified 19 documents falling within the terms of the Applicant's request. It decided to release three documents in full and nine documents in part, and refuse access to seven documents in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. On 25 October 2019, the Applicant's legal representative agreed to narrow the scope of the request to exclude 'personal affairs information of witnesses' and sought information regarding a specified address only. Accordingly, the Agency did not rely on section 25 to exclude the above information from the review.
5. As I am satisfied the Applicant agreed to narrow the scope of their request on 25 October 2019, I am not authorised under sections 49A(1)(a) and 49F of the FOI Act to now include this information as part of my review. Accordingly, any personal affairs information of witnesses falls outside the scope of my review and is to be deleted in accordance with section 25. However, I do not consider the dog owner to be a witness. Accordingly, their personal affairs information remains within the scope of this review.
6. I have examined copies of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the information provided with the review application lodged by the Applicant's legal representative dated 18 November 2019; and
 - (c) the Agency's submission dated 6 December 2019.
9. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

Review of exemptions

10. The Agency relies on the exemption under section 33(1) to refuse access to the documents in full and in part. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

11. A document is exempt under section 33(1) if two conditions are satisfied:
- (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant;¹ and
 - (b) such disclosure would be 'unreasonable'.

Do the documents contain personal affairs information?

12. Information relating to a person's 'personal affairs' includes information that identifies any person, or discloses their address or location. It also includes any information from which this may be reasonably determined.²
13. The documents subject to review include investigation notes, incident details, letters, photographs, statements, interview records and notices.
14. The information exempted by the Agency pursuant to section 33(1) includes:
- (a) the names of Agency officers;
 - (b) names, addresses, dates of birth and age, email addresses, telephone numbers of third parties;
 - (c) a photograph of a third party's driver licence;
 - (d) statements provided by a third party to the Agency during an interview;
 - (e) letters from the Agency to a third party;
 - (f) outcome of the Agency's investigation in relation to a third party;
 - (g) interview records and statements of third parties; and
 - (h) other information capable of identifying third parties.
15. I am satisfied the above information is personal affairs information for the purposes of section 33(1).
16. The Agency exempted the dog's name and its reproductive status under section 33(1). However, I am not satisfied this constitutes information relating to the personal affairs of a person, as defined in section 33(9). I consider this information relates to an animal and its owner's identity or location would not be reasonably identifiable from this information. Accordingly, I am not satisfied this information is exempt under section 33(1). In any case, I note the dog's reproductive status was released by the Agency in certain documents subject to review and release of this information to the Applicant would not be unreasonable in the circumstances.

¹ Sections 33(1) and (2).

² Section 33(9).

Would disclosure of the personal affairs information be unreasonable?

17. Considering whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official information with the interest in protecting an individual's personal privacy in the circumstances.

18. I have considered the following factors in this matter:

(a) The nature of the personal affairs information and the circumstances in which the information was obtained

The personal affairs information of third parties reveals names and home addresses and the identities of third parties other than the Applicant. Therefore, I consider this information is sensitive and personal in nature.

Even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information in a document under the FOI Act may still be unreasonable in the circumstances.³

The personal affairs information was obtained by the Agency through an investigation and the exercise of its law enforcement functions. Therefore, on balance, I consider these factors weigh against disclosure.

(b) The circumstances in which the information was obtained by the Agency

The information was obtained by the Agency in the context of undertaking an investigation into an alleged breach of the *Domestic Animals Act 1994* (Vic) (**Domestic Animals Act**) in response to a complaint made to the Agency by the Applicant.

I am of the view the third parties who provided their personal affairs information to the Agency did so on the understanding it would be used by the Agency in discharging its law enforcement functions under the Domestic Animals Act. I consider it is reasonably likely the individuals, who participated in the Agency's investigation, would not expect their personal affairs information would be disclosed under the FOI Act. This factor weighs against disclosure.

(c) Whether any public interest would be promoted by release of the information

The Agency states in its submission:

I have relied on exemptions made under Section 33(1) as I believe it would be unreasonable to release the information as I consider individuals have an expectation of privacy when providing information to this [Agency] in light of its law enforcement functions...I believe there is a strong public interest in maintaining [the Agency's] ability to obtain information voluntarily from members of the community in relation to alleged offences. That is, the public may be less likely to provide frank information on a voluntary basis. In the circumstances of this matter, I can see no countervailing public interest in the disclosure of documents.

³ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

The Applicant's legal representative states:

It is our view that the public's safety is of a public interest, especially if additional complaints and/or incidents have occurred relating to a dog and the residence of [address in Victoria]. We believe that the public's safety outweighs the privacy of the public in these circumstances.

Having considered the above submissions, while I acknowledge the impact of the alleged incident on the Applicant, having reviewed the documents, I am satisfied the public interest would not be promoted by disclosure of the third parties' personal affairs information to the Applicant.

I accept the Agency's submission 'there is a strong public interest in maintaining [the Agency's] ability to obtain information voluntarily from members of the community in relation to alleged offences' to support the Agency's law enforcement functions, including investigating complaints such as the alleged incident in this matter.

I am satisfied there is a broader public interest in ensuring the ability of the Agency to conduct investigations into alleged breaches of the Domestic Animals Act and to obtain the cooperation of witnesses and persons subject to complaints during an investigation. Accordingly, this factor weighs against disclosure.

(d) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁴

Although the Applicant's representative has submitted release of the information is in the public interest as it will promote public safety, I am of the view the Applicant's interest in accessing the information under the FOI Act is to pursue a personal interest, namely possible legal action. In light of information already released to the Applicant, it is evident the Agency investigated the alleged incident and took relevant law enforcement action.

While release of the documents in full would provide the Applicant with access to the personal affairs information they seek, having reviewed the documents, it is not evident whether their purpose for seeking the documents would be likely to be achieved. Accordingly, I consider this factor is not determinative in this matter.

(e) The extent to which the information is available to the public

The personal affairs information sought is not in the public domain. This factor weighs against disclosure.

(f) The likelihood of further disclosure of information, if released

The FOI Act does not impose any conditions or restrictions on an applicant's use of documents obtained under the FOI Act. Accordingly, I must consider the likelihood and potential effects of further dissemination of the third parties' personal affairs information if released.

While there is no information before me to suggest the information will be publicly disclosed by the Applicant, I consider it is reasonably likely the privacy of the dog owner will be impacted

⁴ *Victoria Police v Marke* [2008] VSCA 218 at [104].

should their personal affairs information be disclosed. Accordingly, I am satisfied this factor weighs against disclosure.

(g) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information

I note the dog owner objected to the release of their personal affairs information to the Applicant. Despite this matter involving the issuing of infringement notices by the Agency to the dog owner, I consider this factor weighs against disclosure as the information was obtained by the Agency for a law enforcement purpose, which has been served.

Further, there is no information before me as to the views of other relevant third parties whose personal affairs information is in the documents.

Having regard to the circumstances in which the documents were created, I am of the view the third parties would be reasonably likely to object to the release of their personal affairs information. This factor weighs against disclosure.

(h) Whether the disclosure of information would, or would be reasonably likely to endanger the life or physical safety of any person⁵

There is no information before me to suggest this is a relevant factor in this case.

19. Having considered the above matters, I am satisfied it would be unreasonable to release the personal affairs information of third parties in the documents. Accordingly, such information is exempt under section 33(1).
20. However, I am not satisfied disclosure of Agency officer names, which have been released to the Applicant in other documents subject to this review, is unreasonable.
21. Further, I note the Agency exempted details regarding the outcome of the Agency's investigation and relevant law enforcement action taken under section 33(1). In my view, this information does not constitute personal affairs information where identifying information of third parties is not to be released and disclosure merely demonstrates the Agency's exercise of its law enforcement functions under the Domestic Animals Act. I am of the view release of this information will go some way to satisfying the Applicant's interest in obtaining access to the documents while balancing the privacy rights of the dog owner through the non-disclosure of their personal affairs information.
22. The Schedule of Documents in **Annexure 1** outlines my decision in relation to each of the documents subject to review.

Deletion of exempt or irrelevant information

23. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
24. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ and the effectiveness of the deletions. Where

⁵ Section 33(2A).

⁶ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.⁷

25. I have considered the effect of deleting irrelevant and exempt information from the documents. I am satisfied it is practicable to delete such information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

26. On the information before me, I am satisfied the exemption under section 33(1) applies to certain information in the documents. However, I have decided to release additional information in the documents where I have determined it is not exempt under the FOI Act.
27. Where it is practicable to provide the Applicant with an edited copy of the documents, with exempt and irrelevant information deleted in accordance with section 25, I have determined to grant access to those documents in part.

Review rights

28. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁸
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
31. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
32. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.¹¹

Other matters

33. Section 49P(5) states, if I decide to disclose a document claimed to be exempt under section 33(1), if practicable, I must, notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.
34. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.¹²

⁷ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and (3FA).

35. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.¹³
36. In these circumstances, I have decided it is not practicable or necessary to notify third parties of their review rights given the information capable of identifying the dog owner and other third parties has been exempted under section 33(1).

When this decision takes effect

37. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹² *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

¹³ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[date]	Investigation notes	1	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>Exempt and irrelevant information is to remain deleted except for the following information, which is not exempt and is to be released:</p> <p>(a) the name of the dog and its reproductive status in the entry dated[date]; and</p> <p>(b) all information in the entry dated [date]</p>	<p>Section 33(1): I am satisfied it would be unreasonable to release the names and addresses of the dog owner and other third parties in the document for the reasons set out in the Notice of Decision. Accordingly, this information is exempt under section 33(1).</p> <p>I am not satisfied it would be unreasonable to release information regarding the outcome of the Agency's investigation, as I am not satisfied this information constitutes personal affairs information where the identifying information of a relevant third party has not been released. Further, I am satisfied there is a public interest in the Applicant being informed about the Agency's exercise of its law enforcement functions. Accordingly, this information is not exempt under section 33(1).</p> <p>Further, I am not satisfied the name and reproductive status of the dog is personal affairs information. Accordingly, this information is not exempt under section 33(1).</p> <p>Section 25: I am satisfied personal affairs information of third party witnesses, other than the dog owner, is irrelevant</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>to the scope of the Applicant's request and is to be deleted in accordance with section 25.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25.</p>
2.	[date]	Incident details	1	Released in part Section 33(1)	<p>Release in part Section 33(1), 25</p> <p>Exempt and irrelevant information is to remain deleted except for the following information, which is not exempt and is to be released:</p> <p>(a) the name of the dog under 'Dog Details';</p> <p>(b) all information under 'Alleged Offences'; and</p> <p>(c) all information under 'Documents Received/Issued'.</p>	Sections 33(1) and 25: See comments for Document 1.
3.	[date]	Applicant's complaint	1	Released in part	<p>Release in part Sections 33(1), 25</p>	Sections 33(1) and 25: See comments for Document 1.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Section 33(1)	Exempt and irrelevant information, as deleted by Agency is to remain deleted.	
4.	[date]	Letter from the Agency	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 Exempt and irrelevant information is to remain deleted except for the following information, which is not exempt and is to be released: (a) the name of the dog.	Sections 33(1) and 25: See comments for Document 1.
5.	[date]	Letter from the Agency	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 Exempt and irrelevant information, as deleted by Agency is to remain deleted.	Sections 33(1) and 25: See comments for Document 1.
6.	[date]	Photographs of dog and microchip	2	Released in full	Not subject to review	
7.	[date]	Photograph of dog owner's driver licence	1	Refused in full Section	Refuse in full Section 33(1)	Section 33(1): See comments for Document 1.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				33(1)		
8.	N/A	Victim Statement	1	Released in full	Not subject to review	
9.	[date]	Victim Statement	3	Released in full	Not subject to review	
10.	[date]	Officer Statement	3	Released in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>Exempt and irrelevant information is to remain deleted except for the following information, which is not exempt and is to be released:</p> <ul style="list-style-type: none"> (a) on page 1: in the 7th paragraph starting with 'On', the three references to the name of the dog; (b) on page 1: in the 8th paragraph starting with 'Hume', the first 11 words; (c) on page 2: in the 3rd paragraph starting with 'On' all information except for the third party's name in the first line; and 	Sections 33(1) and 25: See comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					(d) on page 3: in the 3rd paragraph starting with 'On' all information except for the third party's name in the first line.	
11.	[date]	Interview notes (Typed up)	5	Refused in full Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>This document is to be released except for the following information, which is exempt under section 33(1):</p> <p>(a) the name, address, date of birth of the dog owner on pages 1 and 2, and pronoun on page 3;</p> <p>(b) the name of a third party and their age on page 3, and references to their relationship with the dog owner on page 2.</p>	Sections 33(1) and 25: See comments for Document 1.
12.	N/A	Property ID	1	Released in part Section 33(1)	<p>Release in part</p> <p>Section 33(1)</p> <p>Exempt and irrelevant information, as deleted by Agency is to remain deleted.</p>	Sections 33(1) and 25: See comments for Document 1.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
13.	N/A	Current owner document	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 Exempt and irrelevant information, as deleted by Agency is to remain deleted.	Sections 33(1) and 25: See comments for Document 1.
14.	[date]	Outcome	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 Exempt and irrelevant information is to remain deleted except for the following information, which is not exempt and is to be released: (a) on page 1: in the 1 st paragraph, the five words redacted in the 3 rd line; and (b) all information in the 2 nd paragraph.	Sections 33(1) and 25: See comments for Document 1.
15.	[date]	Letter from the Agency	1	Refused in full Section 33(1)	Release in part Sections 33(1), 25 This document is to be released except for the name of the recipient	Sections 33(1) and 25: See comments for Document 1.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					and their address.	
16.	[date]	Infringement notice 1 attached to Document 15	2	Refused in full Section 33(1)	Release in part Sections 33(1), 25 This document is to be released except for the name of the recipient and their address.	Sections 33(1) and 25: See comments for Document 1.
17.	[date]	Infringement notice 2 attached to Document 15	2	Refused in full Section 33(1)	Release in part Sections 33(1), 25 This document is to be released except for the name of the recipient and their address.	Sections 33(1) and 25: See comments for Document 1.
18.	[date]	Interview notes recorded by Agency officer (Hand written responses to questions)	5	Refused in full Section 33(1)	Release in part Sections 33(1), 25 This document is to be released except for the following information, which is exempt under section 33(1): (a) the name, address, date of birth and driver licence details of the dog owner on pages 1 and 2; and	Sections 33(1) and 25: See comments for Document 1.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					(b) the name, address and age of a third party on page 3, and references to their relationship to the dog owner on pages 2 and 3.	
19.	[date]	Interview notes recorded by Agency officer (Hand written responses to questions)	5	Refused in full Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>This document is to be released except for the following information, which is exempt under section 33(1):</p> <p>(a) the name, address, date of birth and driver licence details of the dog owner on pages 1 and/or 2; and</p> <p>(b) the name of a third party and their age on page 3, and references to their relationship to the dog owner on pages 2 and 3.</p>	Sections 33(1) and 25: See comments for Document 1.